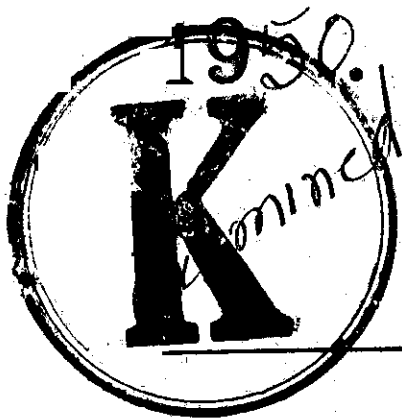




File No. S Kanara 2/50  
Legal DEPARTMENT  
A BRANCH

Subject:— Kanara Suit

Civil Suit No. 133 of 1949

Govind Mahableshwar Hegde } - Plff  
and others

VS;

The State of Bombay - Def

For a declaration that the order of the collector of Kanara dated 11/7/48 directing the Betta Survey No. 43 to be used by the occupants of Survey No. 9, 10 and 12 and the Betta Survey No. 11 B/2 by the occupants of Survey No. 5-8 namely the Plff is illegal and that the Plff are entitled to enjoy both the Survey Nos. 43 and 11 B/2 in proportion to the area of garden land held by them and for an injunction

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S Kanara 2/50

File No.

Std. Form Slip 24-B

S. Kanara 2/50

C O N T E N T S.

Legal Department File No. D.: Kanara 2/50.

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Suits Kanara

C.S. No. 133 of 1949.

Govind Mahabaleshwar Hegde  
Vs. and others.

State of Bombay

For a declaration that the order of the collector of Kanara directing the Betta Survey No. 43 to be used by the occupants of survey Nos. 9, 10, 12 and the Betta Survey No. III B/2 by the occupants of survey No. 58 namely the plff. is illegal and that the plffs are entitled to enjoy both the survey Nos. 43 and III B/2 in proportion to the area of garden land held by them and for an injunction

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In the Court of the Civil Judge  
Senior Division at Karwar.

Original Suit No 433 of 1949.

1. Govind Mahableshwar Hegde, aged 24,
2. Venkatraman Ramkrishna Hegde, aged 30,
3. Narasinha Venkappa Hegde, aged 55,

All the above three Haviks, ryots of  
Mensikeri in Hipnalli village in Sirsi  
Taluka... .. Plaintiffs

v e r s u s

1. The Province of Bombay.
  2. Paramayya Ganapayya Hegde, aged 54,
  3. Ganapayya Narayan Hegde, aged 54,
  4. Ganapayya Krishnappa Hegde, aged 60,
  5. Manjappa Krishna Hegde, aged 50,
- Nos. 2 to 5 Haviks, ryots, of Hipnalli  
village in Sirsi Taluka... .. Defendants.

Claim Rs. 5/-.

The above-named Plaintiffs beg to state as  
follows:

1). The Plaintiffs have been and are the owners of survey number 58 of the Hipnalli village and as such are in the possession of the said survey number. Survey numbers 9, 10 and 12 of the said Hipnalli village belong to the four persons viz., Defendants Nos. 2 to 5 as described and detailed above. The lands so owned respectively by the Plaintiffs and Defendants Nos. 2 to 5 are garden lands which enjoy the privilege of having Betta lands or Betta survey numbers assigned to them for the up-keep and maintenance of the said garden lands. This has continued as the time honoured and the commonly prevalent practice in this District where the garden lands owned by different persons have always such Betta lands assigned to them for being useful for such upkeep and maintenance of those garden lands.

2). In 1937, two Betta survey numbers viz., S.No.43 and S.No.111/B-2 were assigned as Betta for the use of the above said S.No. 58 and S.Nos. 9,10 and 12 of Hipnalli village. Ever since this grant or assignment in 1937 both the Plaintiffs and Defendants Nos. 2 to 5, as being the owners of the respective garden land S.Nos. 58

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and S.Nos. 9, 10 & 12 of Hipnalli village, have been removing Soppu and enjoying the other privileges from S.No.43 only, the other S.No.111/B-2 having continued to be practically a hillock consisting mostly of laterite quarries and containing some inferior kind of plant growth and bushes which are not useful for the purpose of Soppu. On the other hand, S.No.43 comprises lot of Honlu, Anale and Nandi trees which are useful for Soppu and a large quantity of Soppu is consequently available therefrom.

3). When this state of affairs and this mode of enjoyment had been prevalent and had been going on without any restriction or obstruction, the Collector of Kanara by his Order No. T.R/9164 and 9942 dated 1-7-1948 which was served on these Plaintiffs on 20th July 1948, assigned, out of the above Betta survey numbers the whole of S.No. 43 to these Defendants Nos. 2 to 5 as being the owners of S.No. 9,10 and 12 and S.No.111/B-2, to these Plaintiffs as being the owners of the garden land S.No. 58. S.No.43 was assigned as mentioned above mainly on the ground that the said survey number is nearer S.Nos. 9,10 and 12 than S.No.111/B-2. The Collector while realising that S.No.111/B-2 is devoid of trees growth useful for Soppu, suggested in his order that the owners of S.No.58 should plant and grow new trees yielding Soppu. However, this is well nigh impossible looking to the rocky nature of the soil and it is futile to ask for trees growth to be raised there. The said order of the Collector having caused great injustice and hardship to the Plaintiffs they appealed to the Commissioner S.D. requesting him to set aside the order of the Collector and to allot parts of both the survey numbers to the respective owners in proportion to the area held by each of them. But this appeal happen-

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happened to be dismissed by the said authority on unjustifiable grounds on February 28th 1949 by his order No.F.O.R. 592. Thereupon the Plaintiffs preferred an appeal to the Local Government. But as it was not disposed of for a pretty long time and as the time for this suit was expiring out, the Plaintiffs thought of instituting this suit and as a preliminary to that, they gave a notice of this intended action addressed to the Province of Bombay under Section 80 of the Civil Procedure Code dated 22-6-1949 and the notice was accordingly delivered to the Collector of the Kanara District as required by the provisions of the same section and a due acknowledgement of the receipt of that notice dated 22-6-1949 has been duly received by the pleader for the Plaintiffs by whom it was delivered on their behalf. Subsequently even an intimation dated 12th August 1949 has been received from the Government of Bombay to say that the Government sees no reason to interfere with the order of the Commissioner S.D. The necessity for this suit is hence all the more clarified.

4. It is respectfully submitted that the Collector's order which is the main basis for the grievance of the Plaintiffs which they seek to have redressed by this suit, is illegal and unwarranted on more than one ground. By the order of the Collector great injustice and hardship have been caused to the Plaintiffs and they have therefore been compelled to file this suit after the expiration of two months next after the delivery of the notice in writing as referred to above. As already stated above the Plaintiffs reiterate and submit that there was no justification at all for the hardship and inconvenience caused to the Plaintiffs by assigning to them only S.No.111/B-2 and by assigning the whole of S.No.43 exclusively to Defendants Nos. 2 to 5 as being the owners of S.Nos. 9,10 & 12.

This action whereby the Plaintiffs were unjustifiably deprived of the use and privileges they had been enjoying in and in respect Betta S.No.43 much to their detriment was altogether uncalled for and unwarranted on facts and also illegal in law. The Collector could have no justification for thus depriving these Plaintiffs as owners of S.No.58, of the use of the Betta S.No.43 under the guise of the so called redistribution of Betta area for which there was no justifying necessity and no proper occasion and under which, if at all, both the Betta numbers mentioned above should have been assigned to both the groups of owners viz., Plaintiffs Nos. 1 to 3 on one hand and Defendants Nos. 2 to 5 on the other in proportion to their respective holdings on garden lands as detailed above.

5). The cause of action for this suit arose within the jurisdiction of this Court on 1-7-1948, the date of the order of the Collector which is the main basis of this suit and this suit filed to-day is quite in time by excluding the two months time required to lapse after the delivery of the notice under Section 80.,

6). This suit being against the Province of Bombay it is filed in this Court and this Court has accordingly jurisdiction to entertain and dispose of that suit.

7). As Defendants Nos. 2 to 5 are intimately interested in the reliefs sought in this suit by way of declaration and consequent relief of injunction they are joined as parties to this suit in order to obviate any objection on their part and to make the reliefs also binding on them.

8). It is therefore prayed:

That by setting aside the above order of the Collector of Kanara dated 1-7-1949 it be declared that the

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Plaintiffs are entitled to enjoy both the Betta  
S.Nos. 43 and 111/b-" in proportion to the area held  
by them along with the Defendants Nos. 2 to 5, for  
Soppu and other privileges

and

That as a consequential relief an injunction  
be granted restraining the Province of Bombay and the  
owners of S.Nos. 9, 10 and 12 from obstructing the  
Plaintiffs in peacefully enjoying the Betta privileges  
in both the above survey numbers.

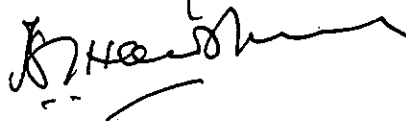
Valuation for this is..... Rs. 5/-.

9). This Court may be pleased to award the  
costs of this suit from such of the Defendants as may  
be found liable on the appreciation of all the facts  
of this suit.

Signatures:-

Verification:-

Presented 30/8/1949.

True copy  


This suit is the result of a dispute between the plaintiffs on the one hand and the defendants Nos. 2 to 5 on the other hand over lands known in the Kanara district as "Betta" lands. Betta lands are lands of protected forests assigned for the more beneficial use of adjacent group of garden lands. Two such lands were jointly assigned in 1937 to the plaintiffs and the defendants Nos. 2 to 5 who were respectively occupants of Survey No. 58 and Survey Nos. 9,10 and 12. In 1948, however, disputes arose between them over the use of Betta Survey No.43 and both the parties approached the Collector. The Collector by way of re-distribution directed that Survey No.43 should be used by the defendants Nos. 2 to 5 and the other Survey No.111B/2 should be used by the plaintiffs. This order was confirmed by the Commissioner in appeal. The plaintiffs did not like this order because apparently, according to them, the land given to the defendants Nos. 2 to 5 is more useful than the other land. The Collector had made the distribution in consonance with the Betta Rules and orders passed in that behalf. (Vide Bombay Forest Manual Vol.II p.55 and G.R. R.D. No.3042/45 dated 9th April 1948). The Collector's order appears to be reasonable. The dispute is mainly between the plaintiffs and the defendants Nos. 2 to 5 and it appears from the nature of the suit that even if the plaintiffs succeed Government's interests are not likely to be affected in any way. The defence of the suit may be sanctioned on the lines of the accompanying brief.

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x  
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In the Court of the Civil Judge, Senior Division, Karwar.

Civil Suit No.133 of 1949.

1. Govind Mahabaleshwar Hegde.  
 2. Venkatraman Ramkrishna Hegde.  
 3. Narasinha Venkatappa Hegde.  
 all of Hipnalli village,  
 taluka Sirsi. .... Plaintiffs.

vs.

The State of Bombay and others. .... Defendants.

The following is the written statement on behalf of the defendant No.1- the State of Bombay.

1. Paragraph 1 of the plaint is not disputed.
2. With reference to paragraph 2 of the plaint the defendant does not admit the allegation that Survey No. 111B<sub>2</sub> is not used for the purpose of Soppu. On the contrary, according to the defendant's information and belief, a major portion of Survey No. 111B<sub>2</sub> is covered with Soppu yielding trees and is capable of yielding more growth of such variety. The plaintiffs are put to strict proof of their allegation.
3. With reference to paragraph 3 of the plaint the defendant submits that as disputes had arisen between the plaintiffs on the one hand and defendants Nos. 2 to 5 on the other hand over the use of Betta Survey No. 43, it was necessary to re-distribute the Betta land which had been jointly assigned to the plaintiffs and the defendants aforesaid in 1937. As Survey No.43 was nearer to garden Survey Nos. 9,10 and 12 belonging to defendants Nos. 2 to 5 and as it is so, according to the prescribed scale-i.e. 9 acres of Betta to one acre of garden land - the Collector directed that Survey No.43 should be used by the defendants Nos. 2 to 5. Similarly Survey No. 111B<sub>2</sub> was nearer to the plaintiffs' garden Survey No.58 and also fulfilled the required scale and therefore it was directed to be used by the plaintiffs.
4. The defendant submits that the Collector's order which is confirmed in appeal by the Commissioner, is just, proper and reasonable and the plaintiffs' contention

to the contrary are not tenable.

5. The defendant, therefore, submits that the suit may be dismissed with costs.

District Government Pleader,

I, \_\_\_\_\_ District Government Pleader, \_\_\_\_\_, do hereby declare that what is stated in paragraphs 1 to 5 above is true according to the information received and believed to be true. This verifications is made at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 1950.

District Government Pleader,

Suits :

Kanara.

For a declaration that the order of the Collector of Kanara dated 1st July 1948 directing the Betta Survey No. 43 to be used by the occupants of Survey Nos. 9, 10 and 12 and the Betta Survey No. 111B/2 by the occupants of Survey No. 58 namely the plaintiffs is illegal, and that the plaintiffs are entitled to enjoy both the Survey Nos. 43 and 111B/2 in proportion to the area of garden land held by them and for an injunction.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 12166.

Bombay Castle, 25th August 1950.

Letter from the Collector of Kanara, No. 7642, dated the May 1950—Forwarding

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), KANARA.

Civil Suit No. 133 of 1949.

Govind Mahableshwar Hegde and others ... Plaintiffs;

versus

The State of Bombay and others ... Defendants.

the papers in the suit  
noted in the margin;  
and requesting sanction to its defence.

Memorandum to the District Government Pleader, Kanara, No. 11855, dated the 21st August 1950—Forwarding a copy of the brief with its accompaniments in advance.

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RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

*Original for* { *R. T. Katarkar*  
P. M. LAD,  
Secretary to Government.

G. R., No. 12166, L. D., dated the 25th August 1950.

To

- \* The Agriculture and Forests Department,
- \* The Collector of Kanara,  
The District Government Pleader, Kanara (with two copies of the brief).

\*With a copy of the brief.

No. of 1950.

Copy forwarded for information and guidance to

*Issued  
encl  
3/10/50*

*Subd. after issue*

*File in S. Kanara / 50 (new)*

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KANARA CIVIL SUIT No. 133 of 1949.

*Chronological Statement of Facts.*

The suit is for a declaration that the order of the Collector of Kanara dated 1st July 1948 directing the Betta Survey No. 43 to be used by the occupants of Survey Nos. 9, 10 and 12 and the Betta Survey No. 111B/2 by the occupants of Survey No. 58 namely the plaintiffs is illegal, and that the plaintiffs are entitled to enjoy both the Survey Nos. 43 and 111B/2 in proportion to the area of garden land held by them and for an injunction restraining Government and the defendants Nos. 2, 3, 4 and 5 from obstructing the plaintiffs in their enjoyment of both the above survey numbers.

2. Survey No. 58 of the village of Hipnalli, taluka Sirsi, is garden land belonging to the plaintiffs. The defendants Nos. 2 to 5 are the occupants of garden lands bearing Survey Nos. 9, 10 and 12 of the same village. Survey Nos. 43 and 111B/2 are Betta lands i.e. they are lands assigned to the adjoining garden lands and the occupants of the latter are entitled to certain privileges in respect thereof. It appears that in 1937, these Betta lands were assigned by Government for the use of the garden lands in Survey Nos. 9, 10, 12 and 58. This grant was made on the joint application of the plaintiffs and the defendants Nos. 2 to 5 and the Betta lands were granted to them jointly.

3. In the year 1948, disputes arose between the plaintiffs on the one hand and the defendants Nos. 2 to 5 on the other hand over the use of Betta Survey No. 43 which was more convenient and yielded more Soppu than Betta Survey No. 111B/2. Both the parties approached the Collector for a final order regarding the use of these lands.

4. On 1st July 1948, the Collector passed an order that Survey No. 43 should be used by the defendants Nos. 2 to 5 who were occupants of garden Survey Nos. 9, 10 and 12 and Survey No. 111B/2 should be used by the plaintiffs who were the occupants of garden Survey No. 58.

5. Aggrieved by the Collector's order, the plaintiffs preferred an appeal to the Commissioner, S. D., but on 28th February 1949 the appeal was dismissed by the Commissioner.

6. On 22nd June 1949, the plaintiffs gave notice of suit under section 80 of the Civil Procedure Code and on 30th August 1949 they filed the present suit in the Court of the Civil Judge, Senior Division, Karwar.

*Grounds of Defence.*

The relative position of the garden lands belonging to the plaintiffs and the defendants Nos. 2 to 5 and of the Betta Survey Nos. 43 and 111B/2 has been very clearly shown in the sketch dated 20th January 1947 at page 1 of File I. It will be seen from the sketch that Betta Survey No. 43 is nearer to the defendants' Survey Nos. 9, 10 and 12 than Betta Survey No. 111B/2. Betta lands are lands of protected forests assigned to the adjoining garden or group of garden lands the occupants whereof are entitled to certain privileges specified in Rule 42 of the Bombay Forests Rules, 1942 (*vide* Bombay Forest Manual, Vol. II, p. 55). In assigning Betta land, the scale to be worked up to is 9 acres of Betta to one acre of garden (*vide* G. R., R. D., No. 3042/45, dated 7th April 1948). The area of Survey No. 43 if allowed to be used by the defendants Nos. 2 to 5 would be, according to prescribed scale, i.e. 9 acres of Betta to one acre of garden land. Similarly Survey No. 111B/2 is nearer to the plaintiffs' Survey No. 58 and also fulfils the required scale if assigned for the use of Survey No. 38. It was on this ground that the Collector distributed all these two lands between the plaintiffs and the defendants. The distribution of the lands, in the circumstances, is just, proper and reasonable. The plaintiffs' only contention is that Survey No. 43 yields more Soppu and therefore is more convenient for the cultivation of their garden land than Survey No. 111B/2 which is devoid of all tree growth and incapable of producing Soppu yielding tree. However, from a personal inspection and enquiry made by the Prant Officer it was found that major portion of Survey No. 111B/2 was covered with Soppu yielding trees and the land was capable of yielding more tree growth of such variety and it was, therefore, open for the plaintiffs to plant more Soppu yielding trees in that land and develop it if necessary. There is, therefore, not much substance in the plaintiffs' contention.

2. For the above reasons it should be submitted that the suit fails and must be dismissed with costs.

Received on- 30th August 1949. *44*

Registered on- 3rd September 1949. *21*

Decided on- 30th January 1950.

*Duration - - 5 months.*

In the Court of the Civil Judge, Senior Division, Karwar.

At Karwar.

Exhibit no.45.

Original Civil Suit No. 133 of 1949.

Pleaders.

1. Govind Mahableshwar Hegde, age/24,

2. Venkatraman Ramesh Krishna Hegde, age/30,

3. Narashinha Venkappa Hegde, aged 55,

Plaintiffs

-all the above three Haviks, Ryots of  
Mensikeri in Hipnalli village in Sirsi  
Taluka.

against

Shri.D.G.Pleader

1. The Province of Bombay.

2.4-5 Shri.  
Havinkurve.

2. Paramayya Ganapayya Hegde, 54

No.3- Exparte.

3. Ganapayya Narayan Hegde, 54,

Defendants.

4. Ganapayya Krishnappa Hegde, 60,

5. Manjappa Krishna Hegde, 50,

-Nos.2 to 5 Haviks, Ryots of Hipnalli  
village in Sirsi Taluka.

Claim- Rs.5/-.

Plaintiffs' case is as follows:

Plaintiffs are the owners of Survey No.58 of Hipnalli village and in possession thereof. Survey Nos.9,10 and 12 of the said village belong to Defendants nos.2 to 5. These are garden lands with the privilege of having Betta land assigned to them for the up-keep of the said garden lands. In 1937, two Survey Nos.43 and 111/B2 were assigned as Betta lands for these garden lands. \*Since then Plaintiffs and Defendants nos.2 to 5 have been removing Soppu and enjoying the other privileges from these two lands. Survey No.111/B2 is a hillock consisting mostly of laterite quarries and inferior kind of plant-growth and bushes not useful for the purposes of manure whereas Survey No.43 comprises different types of trees usual for this purpose. In this state of affairs, the Collector of Kanara by his order No.T.R.9164 and 9942 dated 1st July 1948 assigned the whole of Survey No.43 to Defendants nos.2 to 5 and the

*Letter No 93*

*No.P.2*

other land to Plaintiffs relying principally on the ground of convenience and proximity of the said Betta land to the garden lands. The Collector further suggested that the lack of trees could be made up by planting new trees. This, however, is impossible because of the rocky soil. Consequently the said order has caused great injustice and hardship to Plaintiffs. Plaintiffs made an appeal to the Commissioner, S.Dn.; that also was infructuous and appeal to the Local Government met with a similar fate. Thereafter Plaintiffs served a notice under Section 80 of the Civil Procedure Code dated 22nd June 1949. Government sent an intimation dated 12th August 1949 that they saw no reason to interfere with the earlier orders of the Commissioner. Hence this action. The Collector's order in this case, it is submitted is illegal and unwarranted since it has caused ~~injustice~~ injustice and hardship to the Plaintiffs. There was no justification for such an order; both these Betta lands could have been assigned to the respective parties in proportion to their respective holdings. Cause of action accrued on 1st July 1948. It is therefore prayed that the order of the Collector dated 1st July 1948 be set aside and it be declared that Plaintiffs are entitled to enjoy both these Betta Survey Nos. in proportion to their holdings and an injunction be issued restraining the Province of Bombay and the owners of Survey Nos. 9, 10 and 12 from obstructing Plaintiffs in so enjoying the Betta lands.

2. In reply to this Defendant no. 1, the State of Bombay by its written statement, exhibit no. 28, contends as follows: Plaintiffs' \* allegation that Survey No. 115/B2 is not useful as \*o.p.3. Betta area is absolutely incorrect. Major portion of the said Survey no. 1 is covered with Soppu yielding trees and the rest of it also is capable of growing more trees. There being disputes between Plaintiffs and Defendants nos. 2 to 5 over the use of these Betta Survey Nos., the question of redistribution of Betta land arose in 1937. Survey no. 43 being closer to Defendants' lands it was assigned to them. According to the prescribed scale of 9 Acres Betta to 1 Acre garden land Plaintiffs were given 115/B2 which fulfils the required scale being closer to Plaintiffs' lands. This order upheld by the Commissioner

was just and proper and reasonable and within the right of the Collector. The Civil Court has no jurisdiction to interfere with such an order. The merits of such an order cannot be enquired into by the Civil Court. Plaintiffs are trying to take advantage of the improvements effected by the other Defendants in Survey No.43. Bombay Revenue Jurisdiction Act of 1876 bars this suit. Plaintiffs are not in actual possession of Survey 72 on date of suit. Hence an action for injunction does not lie. Notice under Section 80, is not legal. Claim is not in time.

3. Defendants nos.2-4-5 by their written statement exhibit no.22; support the contentions of Defendant no.1 and contend that the allotment of Betta lands is within the discretion of the Government and there is no custom to assign all lands to garden owners. No party can lay claim to any particular land; because of Plaintiffs' indiscriminate use of Survey no.111/B2 till 1937 and total neglect of Survey No.43 and their failure to redeem their oral assurance that Survey No.43 would be left entirely to Plaintiffs, disputes arose between the parties and Government was approached to intervene. Survey No.111/B2 is not a hillock nor inferior in quality to Survey No.43. There was a detailed enquiry by the Collector. The order passed is valid and legal. Rest of the contentions are as set forth by Defendant no.1.

4. On these pleadings following issues were set forth for trial at exhibit no.32:

1. Whether Plaintiffs prove that the order of the Collector is ultra-vires and illegal ?
2. Whether Plaintiffs are estopped from challenging this order ?
3. Whether the Plaintiffs prove their possession of Survey No.43 at the date of the suit ?
4. Whether the notice issued under Section 80 is legal ?
5. Whether the claim is in time *granted*
6. Whether the Civil Court has no jurisdiction to try this suit for reasons alleged by the Defendant?
7. Whether the Plaintiffs are entitled to the declaration sought ?

8. Whether the Plaintiffs are entitled to injunction as claimed ?

9. What order ?

5. My findings are:-

6. No jurisdiction.

9. As under.

6. No evidence is adduced in this case. It is agreed between parties that issue no.6 should firstly be heard and decided which Plaintiffs' pleader submits would go to the root of the suit. If the Civil Court has no jurisdiction to entertain or try this suit his whole action will have to be turned down. The pleadings given above give us a background of the present action at a glance.

\* 7. I shall however shortly recapitulate what has led to the present action. Plaintiffs have produced a copy of Map of garden and Betta Survey Nos. exhibit no.38, showing the garden lands Survey Nos.9,10 and 12 to Defendants nos.2 to 5 and Survey no.58 belonging to the Plaintiffs and the Betta lands Survey no.43 and 111/B2. Till 1946, the relations between parties appear to have been fairly cordial and Plaintiffs and Defendants were enjoying these Betta- Survey nos.58 and 111/B2 allotted to them jointly without any friction. On 14th August 1946, for the first time we find an application by the Plaintiff to the Sirsi Mamlatdar complaining that Defendants do not allow Plaintiffs to remove the leaf-manure and intimidate them asking the Mamlatdar to settle the dispute (See exhibit no.39). The Panchanama made subsequently on 21st August 1946 is at exhibit no.40. That shows that Survey no.43 is 23 Acres 25 Gunthas in extent with bushes and undergrowth whereof Lagvad had been made of some part. The Panchas also reported that similar Lagvad does not appear to have been made in Survey No.111/B2. Survey No.58, measures 1 Acre 32 Gunthas and Survey Nos.9,10 and 12 measure 5 Acres 9 Gunthas. After enquiry the Mamlatdar reported that the contentions of the holders of Survey Nos.9,10 and 12 were true and to avoid ~~further~~ unpleasantness he proposed that the Betta Nos. be subdivided in proportion with the area of garden lands, regard being had to the existing Vahivat and also reported that Defendants had incurred considerable expenditure in improving Survey No.43.

\*o.p.5.

\*o.p.6.

The Prant Officer supported the Mamlatdar's report. This was forwarded to the Forest Settlement Officer for his remarks after making local inspection. His report is at exhibit no.41, wherein he stated that the root cause of the trouble was that Survey No.43 had come to be developed and cleared by Defendants while Survey No.111/B had remained undeveloped. Distance between \*Survey No.58 to 111/B was about 3 to 3 1/2 furlongs whereas it was more than a mile from Survey Nos.9,10 and 12. He was of the opinion that Plaintiffs could utilise and develop 111/B2. If Survey no.43 was allowed to be utilised by Plaintiffs it would be insufficient for the use of Defendants nos.2 to 5. He therefore opined that if Survey No.43 was assigned to Defendants and 111/B2 to Plaintiffs that would be a solution of the trouble. On 1st July 1948 this recommendation of the Forest Officer was accepted by the Collector as can be seen from exhibit no.42. On 14th August 1948 a Kabja receipt was passed by Defendants nos.2 to 5 to Government, exhibit no.43, stating that Kabja of Survey no.43 had been delivered to them. There was a second application made to the Collector under exhibit no.44 to reconsider the matter which was turned down. The Commissioner also under his order dated 28th February 1949, exhibit no.45, confirmed the order of the Collector.

8. So far as the present line of defence embodied in issue no.6, which has now been agreed to be adjudicated as a preliminary issue, Bombay Revenue Jurisdiction Act X of 1876, Section 4(f) provides as follows: Subject to the exception herein-after appearing, no Civil Court shall exercise jurisdiction as to any of the following matters.- viz. respecting the occupation of waste or vacant lands belonging to the Crown. Shri. Mavinkurve, pleader of Defendant no.1, submits that the disposal of Betta lands which are nothing other than waste lands belonging to the Crown with regard to which an order has been made by the Collector is an order competent to him which cannot be considered by the Civil Courts and suits relating thereto are expressly barred by Act X of 1876. Now Section 38 of the Bombay Land

Revenue Code provides that subject to the orders of Government it shall be lawful for the Collector at any time to set apart lands, the property of Government and not for the lawful occupation of any person or aggregate of persons in unalienated villages for free pasturage for forest reserve \* or for any other or Municipal purpose. It is therefore submitted that the assignment of lands as Betta lands for the use of garden lands would fall within the powers assigned to the Collector under Section 38 of the Bombay Land Revenue Code. In the commentary to Section 38, Shri. Gupte, the learned commentator, at page 196( III Edition) states that Civil Courts are precluded from entertaining a claim to have lands set apart for free pasturage for villages. This came to be considered by the High Court in Trimbak Vs. Secretary of State for India, XXI Bombay, at page 684 and the High Court held that Section 4 of Act X of 1876 precluded the Civil Courts from entertaining such an action. The High Court observed therein that questions relating to occupation of Government waste lands were claims against Government and the object of the Revenue Jurisdiction Act is to exclude such questions from the jurisdiction of the Civil Courts. While the Court consistently with the course of legislation may have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage still they can go no further and enjoin the Collector to pursue any particular course in connection with them while he is acting bona fide in pursuance of the powers conferred upon by the statute. From these observations of their Lordships in XXI Bombay and in view of the fact that the allotment of lands for the purposes of garden lands would fall under Section 38 of the Land Revenue Code, I am of the opinion that the jurisdiction of the Civil Court to entertain the present suit is clearly precluded. This finding goes to the root of the entire suit. Hence my finding as given above.

\*o.p.7.

Plaintiffs are nonsuited. Plaintiff to pay Defendant no.1 his costs of the suit.

30th January, 1951.

Sd.S.G.J.D'Costa,  
Civil Judge, Senior Division.

| <u>Plff's costs.</u>                                   |            | <u>Deft.No.1's costs.</u>                                   |             |
|--------------------------------------------------------|------------|-------------------------------------------------------------|-------------|
| 1. Stamp for Exh.1.                                    | Rs.6-4-0.  | Stamp for Exhs.Nos.10,14,16,<br>18,20,23,24,25,26,27 & 27A. | Rs.2-1-0.   |
| 2. -Do-for vakhalat<br>Exh.No.3.                       | 0-10-0.    | Pleader's fees                                              | Rs.15-0-0.  |
| 3. -Do - for Exh.31.                                   | 0- 3-0.    |                                                             |             |
| 4. Witness amount.                                     | 1-4-0.     | Total                                                       | Rs. 17-1-0. |
| 5. Pleader's fees .                                    | 15-0.-0.   |                                                             |             |
| 6.Process fees affixed<br>to Exhs.Nos. 1 and 34,9-8-0. |            |                                                             |             |
| 9. Copying fees of<br>Exhs.Nos.5 and 6.                | 0-11-3.    |                                                             |             |
| Total                                                  | Rs.33-8-3. |                                                             |             |
| Disallowed costs of<br>Exh.No. 31.                     | Rs. 0-3-0. |                                                             |             |
| Balance.                                               | Rs.33-5-3. |                                                             |             |

Disallowed costs.

|                                                              |             |
|--------------------------------------------------------------|-------------|
| Stamp for Exhs.Nos. 10,14,16,<br>18,20,23,24,25,26,27 & 27A. | Rs. 2-1-0.  |
| Balance                                                      | Rs. 15-0-0. |

Defendants Nos.2,4 and 5's costs.

|                                                                              |             |
|------------------------------------------------------------------------------|-------------|
| Stamp for vakhalat Exh.No.11.                                                | Rs.0-10-0.  |
| Stamp for Exhs.Nos. 13,15,17,19, and 21                                      | Rs.0-15-0.  |
| Pleader's fees                                                               | Rs.15-0-0.  |
| Total                                                                        | Rs. 16-9-0. |
| Disallowed costs of the<br>stamps affixed to Exhs.Nos.<br>13,15,17,19 and 21 | Rs. 0-15-0. |
| Balance                                                                      | Rs.15-10-0. |

Given under my hand and seal of this Court this day 30th January 1951.

Sd. H.B.Sejekhan,  
Clerk.

Sd. S.G.J.D'Costa,  
Civil Judge, Senior Division, Karwar  
7-3-1951.

Plaintiff's pleader: Sd.M.G.Chandavarkar.  
Defendants' pleader :- Absent when the decree was ready.

Bears court seal.

' True Copy '

District Government Pleader, Kanara,  
Karwar.

Suits:

Kanara.

For a declaration that the order of the Collector of Kanara dated 1st July 1948 directing the Betta Survey No. 43 to be used by the occupants of Survey Nos. 9, 10 and 12 and the Betta Survey No. 111B/ by the occupants of Survey No. 58 namely the plaintiffs is illegal, and that the plaintiffs are entitled to enjoy both the Survey Nos. 43 and 111B/2 in proportion to the area of garden land held by them and for an injunction.

GOVERNMENT OF BOMBAY,  
Legal Department,  
Resolution No. 7672  
Bombay Castle, 15<sup>th</sup> May 1951.

Read Government Resolution, Legal Department No. 12166,  
dated 25th August 1950.

Letter from the District Government Pleader, Kanara,  
-----+ No.93  
In the Court of the Civil Judge (Senior  
Division), Kanara. : of 1951,  
Civil Suit No. 133 of 1949. : dated  
Govind Mahableshwar Hegde and others... Plaintiffs; : the 12th  
vs.  
The State of Bombay and others. . . . Defendants. : February  
-----

1951, stating that the suit noted in the margin was decided by  
the Civil Judge, Senior Division, Kanara on 29th January 1951,  
when the following order was passed :-

" Plaintiffs are nonsuited. Plaintiff to pay Defendant  
No. 1 his costs of the suit."

Letter from the District Government Pleader, Kanara, No.172,  
dated the 22nd March 1951, forwarding uncertified copies of the  
judgment and decree.

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

*R.T. Katarki*

(R.T. Katarki)

original Deputy Secretary to Government.

To  
The Agricultural and Forest Department,  
The Collector of Kanara,  
The District Government Pleader, Kanara.

Submitted for Signature

*11/5*

Issued  
15/5

hsp/11/5

V/ Suits: Kanara.

For a declaration that the order of the Collector of Kanara dated 1st July 1948 directing the Betta Survey No. 43 to be used by the occupants of Survey Nos. 9, 10 and 12 and the Betta Survey No. 111B/2 by the occupants of Survey No. 58 namely the plaintiffs is illegal, and that the plaintiffs are entitled to enjoy both the Survey Nos 43 and 111B/2 in proportion to the area of garden land held by them and for an injunction. / R

GOVERNMENT OF BOMBAY.

Legal Department,

Resolution No. 8834.

Bombay Castle, 27<sup>th</sup> May 1952.

Read Government Resolution, Legal Department No. 7672 dated 15th May 1951.

Letter from the District Government Pleader, Kanara

|                                                                                                                                                                                                        |                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>4 In the Court of the Civil Judge,<br/>(Senior Division), Kanara.<br/>Civil Suit No. 133 of 1949.<br/>Govind Mahableshwar Hegde<br/>and others.<br/>Vs.<br/>The State of Bombay<br/>and others.</p> | <p>No. 66 dated 19th<br/>February 1952<br/>requesting Govern-<br/>ment's sanction to<br/>the defence of the<br/>Civil Appeal No.<br/>56 of 1951 filed<br/>by the plaintiff in the suit noted in the margin.</p> |
| <p>Plaintiffs.</p>                                                                                                                                                                                     | <p>Defendants.</p>                                                                                                                                                                                              |

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No. 56 of 1951 in the Court of the District Judge Kanwar on the lines of the brief accompanying Government Resolution, Legal Department No. 12166 dated the 25th August 1950 and the favourable grounds contained in the judgments of the Civil Judge, (Senior Division), Kanara dated the 29th January 1951.

By order of the Governor of Bombay,

Original

S. W. DHURANDHAR.

S. W. DHURANDHAR,  
Assistant Secretary to Government.

To

Agriculture and Forests Department,  
The Collector of Kanara,  
The District Government Pleader, Kanara.

Done  
27/5.  
Subd for sign  
AE  
24/5- A-5

and 111/B-2 from the same village were assigned as Betta lands to these persons for the use in the form of having manure of leaves from them. The Collector of North Kanara by his orders nos. T.R. 9164 and 9942 dated 1-7-1948 assigned the whole of survey no.43 to defts Nos. 2 to 5 and survey no.111/B-2 to the plff relying principally on the ground of convenience and proximity of these lands to the garden lands. The order of the Collector of North Kanara has caused great injustice and hardship to the plffs. They, therefore, went in appeal to the Commissioner against the said order, but were unsuccessful. Their appeal to Government also was unsuccessful. Plffs, therefore, thought it necessary to seek redress in a civil court and, therefore, gave the notice under section 80 of the Civil Procedure Code on 22-6-49 to deft no.1. Deft No.1 gave a reply to them, however, that they did not see any reason to interfere with their earlier orders. Plffs, therefore, brought the present suit for a declaration and injunction against the defts in the lower court.

2. The defence of the defts respondents was that the allegation of the plffs that the lands bearing survey no.111/B-2 was not useful as Betta land was not correct, that it contains several trees which yield manure of leaves, that the said land was also capable of growing trees, that there being a dispute between the parties in the year 1937 regarding Betta lands for the benefit of their garden lands the Collector of North Kanara re-distributed the same looking to the convenience of the parties and the improvements made by them, that the said order could not be questioned in any civil court and that it was, therefore, barred under section 4 clause (f) of the Bombay Revenue Jurisdiction Act.

3. The learned trial Judge upheld the contentions of the defts-respondents on the point of jurisdiction and dismissed the plff's suit with costs. They have, therefore, now come in appeal.

4. The only point for determination this appeal is:- whether the present suit is barred under the provisions of

In the District Court of Kanara, at Karwar.

Appeal No. 56 of 1951 from decree in civil suit  
No. 133 of 1949 of the Court of the Civil Judge,  
Shri S.G.J. D'Sosta of Karwar.

1. Govind Mahableshwar Hegde.
2. Venkattraman Ramkrishna Hegde.
3. Narsinha Venkappa Hegde.

M.G.  
Mavarkar.

Haviks ryots of Mensikeri in Sirsi. ...Appellants  
(Original Plaintiffs).

Vs.

D.G.P. for No. 1.

1. The Province (State) of Bombay.
2. Paramayya Ganayya Hegde deceased by heirs.

Shri S.B. Mavinkurve  
for Nos. 2, 4 & 5.

1. Timmayya / Bin Parmayya Hegde.
2. Gopal  
Hipnalli No. 2 minor by guardian No. 3.
3. Narayan Ganapayya Hegde of Hipnalli.
4. Ganpati Timmayya Hegde -Do-
5. Manji kom Paramayya Hegde of -Do-

3. Ganpayya Narayan Hegde.
4. Ganpayya Krishnappa Hegde.
5. Manjappa Krishna Hegde.

Nos. 2 to 5 Haviks of Hipnalli in Sirsi. ...Respondent  
(Original Defts).

Claim:- Rs. 5/-.

This is an appeal from the decision of the learned Civil Judge, Senior Division, at Karwar in O.S. No. 133 of 1949. Plffs-appellants brought this suit against the defts-respondents for a declaration that they were entitled to enjoy both the Betta lands bearing survey nos. 43 and 111/B-2 from the village Hipnalli in Taluka Sirsi for the benefit of their garden land bearing survey No. 58 from the same village and restraining the latter from obstructing them in doing that type of enjoyment of those Betta lands. The facts of the case from out of which the present litigation has arisen are as follows. Plff are the owners of survey no. 58 from the village Hipnalli in Taluka Sirsi and are in possession and enjoyment of the same. Survey Nos. 9, 10 and 12 of the same village belong to defts nos. 2 to 5. All these four survey numbers are garden lands. The owners of these lands are entitled to have the use of Betta lands for the benefit of these above garden lands of theirs. In the year 1937 two survey Nos. 43

section 4 clause (f) of the Bombay Revenue Jurisdiction Act ?

I answer the said point in the affirmative for the following reasons.

5. The main facts in this case are not disputed. With regard to the question of jurisdiction it is the argument of the learned pleader for the plffs-appellants that the question of re-assignment of Betta lands is not taken away from the jurisdiction of the civil court under the provisions of the Bombay Revenue Jurisdiction Act. There was no dispute between the parties upto the year 1946 regarding the enjoyment of the Betta lands for the use and benefit of their garden lands for the purpose of securing manure leaves. On 14-8-1946, however, the plffs-appellants for the first time made an application to the Mamlatdar of Sirsi complaining that defts nos. 2 to 5 - respondents nos. 2 to 5 were not allowing them to remove the leaf manure (vide Ex.39). The mamlatdar got a panchanama of the situation in the betta lands made on 21-8-1946 ( vide Ex.40). It showed that fresh plantation of trees was made in the Betta land survey no.43, while no such plantation was made in the other survey no.111/B-2. The plffs-appellants<sup>(4)</sup> garden bearing survey no. 58 measures 1 acre and 32 gunthas, while the garden land bearing nos. 9, 10 and 12 belonging to defts nos. 2 to 5 respondents nos. 2 to 5 measure 5 acres and 9 gunthas. The Mamlatdar of Sirsi made the inquiries in that connection and submitted a report to the Collector of North Kanara recommending that the Betta Lands should be sub-divided in proportion with the area of garden lands regard being had to their existing vahivat and that defts nos. 2 to 5 respondents nos. 2 to 5 had incurred considerable expenditure in improving survey no. 43. The report was confirmed by the Prant Officer. The Forest Settlement Officer, through whom this report passed, also supported the

Mamlatdar. In his view Betta land survey no. 111/B-2 should be assigned to the plffs-appellants for the use and benefit of their garden land survey no. 58 and the same was close to that garden land and that the plffs-appellants should try to develop the same and that the other Betta land survey no. 43 should be assigned to defts nos. 2 to 5 respondents nos. 2 to 5 as it was close to their garden lands bearing survey nos. 9, 10 and 12 and particularly because of the fact that they had developed and improved the said Betta land ~~xx~~ at a considerable cost. The Collector of North Kanara, therefore, accepted all these recommendations of the Mamlatdar, Sirsi, Prant Officer and the Forest Settlement Officer and passed an order which forms the subject-matter of the present litigation. Plffs went in appeal against this order both to the Commissioner as well as to Government, but they were unsuccessful in both these appeals. All these facts can be seen from and are duly proved by the documents Exs. 41 to 45.

6. A preliminary objection to the maintenance of this suit in the civil court has been taken on behalf of the defence having regard to the provisions of section 4 clause (f) of the Bombay Revenue Jurisdiction Act. Those provisions are to the effect that no civil court shall exercise jurisdiction in respect of the occupation of waste or vacant lands belonging to the State of Bombay which have been assigned to the parties to the present suit for the purposes of the use and benefit of their garden land in order to secure manure of leaves. The dispute in the present case clearly refers to the manner in which the two Betta lands bearing ~~survey nos. 43 and 111/B-2~~ from the village Hipnalli in Taluka Sirsi are to be occupied and used by the parties to the present suit. Under the provisions of section 38 of the Bombay Land Revenue Code the Collector possesses the power to pass orders regarding the occupation of any such Betta lands and his decision in that connection is final and cannot be questioned in any civil court in view of the provisions of section 4 clause (f) of the Bombay Revenue Code. The matter has been clearly discussed and decided by our Bombay High Court in the case of

67 37 65.

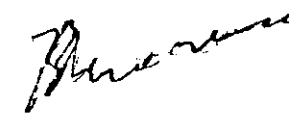
Triambak Vs. The Secretary of State for Indian  
(I.L.R. 21 Bombay , 684 ). The learned trial Judge  
was, therefore, right in dismissing the plffs-  
the appellants' suit on the ground of want of  
jurisdiction. I agree with him and answer the point a  
ssue in the negative.

7. The result of my finding is that the  
decision of the lower court is correct and this appeal  
therefore, stands dismissed with costs.

16th September 1952.

Sd.R.H.Mirajkar,  
District Judge.  
~~xxxxxx~~

True Copy

x 

Dist.Govt.Pl.Kanara,Karwar.

Suits:- Kanara.  
For a declaration that the order of the Collector of Kanara dated 1st July 1948 directing the Betta Survey No.43 to be used by the occupants of Survey Nos. 9,10, and 12 and the Betta Survey No.111B/2 by the occupants of survey No.58 namely the plaintiffs is illegal, and that the plaintiffs are entitled to enjoy both the survey Nos.43 and 111B/2 in proportion to the area of garden land held by them and for an injunction.

GOVERNMENT OF BOMBAY.  
Legal Department,  
Resolution No. 22017/E  
Bombay Castle, 29<sup>th</sup> December 1952.

Read Government Resolution, Legal Department No.8854 dated the 27th May 1952.

Letter from the District Government Pleader, Kanara, Karwar  
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In the Court of the Civil Judge (Senior Division), Kanara. : No.438  
Civil Suit No.133 of 1949. : dated 17th  
Govind Mahableshwar Hegde and others.Plaintiffs. : September  
vs. : 1952, stating  
The State of Bombay and others..... Defendants. : that the  
-----  
Civil Appeal No.56 of 1951 in the suit noted in the margin was decided by the District Judge, Kanara on the 16th September 1952, when the following order was passed:-

"The result of my finding is that the decision of the Lower Court is correct and this appeal therefore, stands dismissed with costs."

Letter from the District Government Pleader, Kanara No.438 dated the 17th September 1952 forwarding uncertified ~~copy~~ copies of the judgment and decree.

RESOLUTION: The result of the <sup>Appeal</sup>~~suit~~ is recorded.

By order of the Governor of Bombay,

*original* *R.T. Katarki*  
R.T. Katarki,  
Deputy Secretary to Government.

To  
The Agriculture & Forests Department,  
The Collector of Kanara,  
The District Government Pleader, Kanara, Karwar.

KML/

*Submitted for signature*  
*24/12*  
*D.S (Civil)*  
*29/12*